

 **ORIGINAL**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Barry Kaminsky

Plaintiff,

-against-

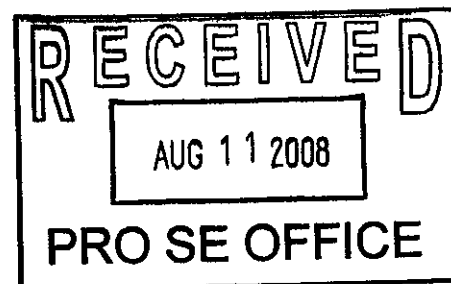
National Aeronautics and Space Administration

Defendant.

**CV 08 3313 COMPLAINT**

**ROSS, J.**

**BLOOM, M.J.**



I. Parties:

Plaintiff Barry Kaminsky resides at 2652 Cropsey Avenue, Apt. 12-F, Brooklyn, NY 11214.

Defendant National Aeronautics and Space Administration resides at NASA Headquarters, Washington, DC 20546-0001.

II. The jurisdiction of the court is invoked pursuant to 5 U.S.C. §552(a)(4)(B).

III. Statement of Claim:


1. On August 27, 2007 I mailed Freedom of Information request 07-287 to the National Aeronautics and Space Administration (NASA) seeking four documents regarding the International Space Station's Early Ammonia Servicer (EAS). I received a response from NASA dated September 11, 2007 stating that my request was being processed in chronological order. NASA's next reply was on February 5, 2008, telling me that they forwarded my request to the JSC FOIA Requester Service Center. The five month delay in forwarding my request is in violation of 14 CFR §1206.604.
2. In a letter dated March 14, 2008, NASA claimed that the final assessment report that I requested doesn't exist and that the noncompliance report that I requested isn't suitable for release to the general public due to the International Traffic in Arms Regulations (ITAR), but I was sent the remaining documents. I appealed on March 31 by further describing the assessment report and asking for a redacted noncompliance report. On May 1, I wrote to inform NASA that the statutory time limit to respond to my appeal had expired. 5 USC §552 (a)(6)(A)(ii).

3. Regina Washington called from NASA Headquarters on May 12 and asked to extend the deadline to respond to my appeal to June 23 because they had “just received” it. I approved the extension. I approved additional extensions on June 23 and July 14. On August 4 I denied a request to extend the deadline to September 9 and requested the documents by the weekend of August 10. I’ve received no further replies.
  - a) NASA violated 5 USC §552 (a)(6)(B)(i) by not notifying me in writing of unusual circumstances that warrant extensions;
  - b) NASA was arbitrary and capricious in setting deadlines that it was unprepared to meet.
4. I mailed a second FOIA request, unrelated to paragraphs 1–3, on February 26, 2008, requesting a list of NASA’s Core, Above Core, and Triage 1 software (request 08-160). I received a letter from NASA dated March 12, 2008 stating that my request was being processed in chronological order. On May 1, I wrote to inform NASA that the statutory time limit to respond to my request had expired. NASA was in violation of 5 USC §552 (a)(6)(A)(i). In a letter dated May 13, NASA requested a nonspecific “additional time period”. On August 4 I responded to the e-mail address included in the letter and requested the documents by the weekend of August 10. NASA responded by e-mail on August 11 saying “We lost two members of our staff — they no longer work for the Agency” and asked again for a nonspecific extension. This late reply doesn’t excuse the violation of 5 USC §552 (a)(6)(A)(i).

IV. Requested Remedy:

5. I request that the court:
  - a) order NASA to release the documents responsive to my appeal of March 31, 2008, regarding the EAS.
  - b) order NASA to release the documents responsive to my FOIA request of February 26, 2008, regarding the list of software applications.
  - c) award me \$100 litigation costs as allowed by 5 U.S.C. § 552 (a)(4)(E); and
  - d) award me other relief that the court deems appropriate.

August 11, 2008

  
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The deadline for a response to a Freedom of Information Act complaint is 30 days.

**5 USC §552(a)(4)(C)**

*Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.*